IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 27TH JUNE 2007 /]TH ASHADHA 1929

WP(C).No. 3381 of 2007(C)

PETITIONER:

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1. SMITHA V.,
   HSST (JR)(PHYSICS), GOVERNMENT HIGHER SECONDARY SCHOOL, WEST KALLADA, KOLLAM (AGED 29, D/O. SURENDRAN PILLAI N., MANAPPURATH PUTHEN VEEDU KOICKKAL BHAGAM, PERUVELIKKARA P.O., WEST KALLADA, KOLLAM).

2. JYOTHI LAKSHMI R.,
   HSST (JR)(PHYSICS), GOVERNMENT H.S.S. KALAVOOR, ALAPPUZHA (AGED 32, THYPARAMBIL HOUSE, PONNAD P.O. MANNANCHERRY, ALAPPUZHA).

3. DEEPA S.,
   HSST (JR)(PHYSICS), GOVT.HIGHER SECONDARY SCHOOL, BIG BAZAR, PALAKKAD (AGED 32, `SANGEETHA' KEERTHI NAGAR, PALLIPPURAM P.O., PALAKKAD).

4. SAMSON K.BABY,
   HSST (JR)(PHYSICS), GOVT.H.S.S. KARUKONE, ANCHAL, KOLLAM (AGED 32, `SREEMANDIRAM', CHEPRA P.O., KOTTARAKKARA, KOLLAM).

5. MANJU ANAND,
   HSST (JR)(PHYSICS), G.M.G.H.S.S., CHADAYAMANGALAM, (AGED 29, W/O. N.P.RADHAKRISHNAN,MELKONATHVILAYIL VEEDU, KODUMON P.O., ATTINGAL).

BY ADV. SRI.K.S.MADHUSOODANAN

RESPONDENTS:

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1. STATE OF KERALA TO BE REP. BY SECRETARY,
   GENERAL EDUCATION (SPECIAL CELL) DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. DIRECTOR OF HIGHER SECONDARY EDUCATION,
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.T.T.MUHAMOOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP.3381/2007)

EXT.P1: PHOTOCOPY OF ADVICE MEMO DT. 4/5/05 OF PETR.1.

EXT.P2: DO. OF PETR.2

EXT.P3: DO. OF THIRD PETR.

EXT.P4: DO. OF 4TH PETR.EXT.

P5: PHOTOCOPY OF ORDER DT. 5/10/2006.

EXT.P6: PHOTOCOPY OF REPRESENTATION OF THIRD PETITIONER.

EXT.P7: DO,. OF 4TH PETR.

EXT.P8: DO. OF 5TH PETR.

EXT.P9: DO. OF FIRST PETR.

EXT.P10: DO. OF SECOND PETR.

A.K. Basheer, J.

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W.P(C) No.3381 of 2007

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Dated this the 27th day of June, 2007.

J U D G M E N T

Petitioners who are working as Higher Secondary School Teachers (Junior) in Physics were recruited through Kerala Public Service Commission in the year 2005. Their grievance appears to be that they are not being considered for "appointment by transfer" to the post of Higher Secondary School Teacher (Senior) provisionally, as has been done in the case of LPSA/UPSA/HSA. It is pointed out by the learned counsel that the Government had given a special favourable treatment in the case of LPSA/UPSA/HSA by "appointing them by transfer" without invoking the power under Section 39 of the KS & SSR. Those teachers had not completed their probation at the time when the Government showed that indulgence to them. While conceding that petitioners also had not completed their probation, it is contended by the learned counsel that the Government is not justified in meting out a different treatment to the petitioners.

2. Per contra, it is contended by the learned Government Pleader that a Division Bench of this Court in WA.No.1000/06 has held that normally, method of recruitment to the post of HSST is by transfer from HSST (Junior) and such recruitment should be made only on the basis of the ratio prescribed in the Special Rules and also only if candidates are not available in the feeder category in the subject concerned. The Division Bench further directed that the vacancies that had occurred after September 20, 2007 shall be filled

up after ascertaining whether as on the date of occurrence of vacancies those belonging to the category of HSST (Junior) in the concerned subject, who had completed the period of probation, were/are available in service.

3. The thrust of the argument of the learned Govt. Pleader appears to be that only those candidates who had completed the period of probation can alone be considered. Anyhow, I do not propose to deal with the rival contentions of the parties at this stage in view of the limited prayer made by the learned counsel for the petitioners at the Bar. He submits that petitioners have preferred Exts.P6 to P10 representations before respondent No1 highlighting all the relevant aspects. The limited prayer to issue a direction to respondent No.1 to take a decision on those representations keeping in view Ext.P5 order also.

In the above facts and circumstances the writ petition is disposed of with a direction to respondent No.1 to consider and pass orders on Ext.P6 to P10 strictly on their merit and in accordance with law, as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this judgment. Needless to mention that an authorised representative of the petitioners shall be afforded sufficient opportunity to be heard before any orders are passed.

A.K. Basheer

Judge.

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